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March 10, 2022

**By ECF**

Honorable Katharine H. Parker  
United States Magistrate Judge  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street  
New York, New York 10007

Re: Andre Diggs v. John Doe, et al.,  
21 Civ. 5849 (PAE) (KPH)

Your Honor:

**Application Granted.** By May 13, 2022, Plaintiff shall properly serve Defendants in this action or otherwise update the Court as to any delays. Failure to comply with this order may lead to sanctions, including recommending that the case be dismissed for failure to prosecute. The Clerk of Court is respectfully requested to mail a copy of this order to the Plaintiff.

**SO ORDERED:**

*Katharine H. Parker*  
HON. KATHARINE H. PARKER  
UNITED STATES MAGISTRATE JUDGE

3/14/2022

I am an Assistant Corporation Counsel in the Office of the Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, and the attorney assigned to the above-referenced matter. I write to respectfully request an adjournment of the initial conference currently scheduled for March 22, 2022 at 10:00 a.m., until a date and time convenient to the Court after the defendants are properly served with process in this action. Plaintiff's position could not be obtained.

Plaintiff initiated this action pursuant to 42 U.S.C. § 1983 on July 7, 2021 against two New York Police Department Officers, identifying them by their tax numbers. (Dkt. No. 2). According to the complaint, plaintiff claims he was falsely arrested for Aggravated Harassment in the Second Degree, although he provides very little detail about his arrest. (*Id.*). The Court has scheduled an initial conference for March 22, 2022 and ordered parties to submit a case management plan on March 14, 2022. (Dkt. No. 18).

At this time, however, there is still no properly named and served defendant in this matter. To date, while summonses have been issued for the two individually named police officers, neither have been served with process. (Dkt. No. 11). The City of New York is not a party to this action. (*See* Dkt. No. 9). Pursuant to New York General Municipal Law Section 50-k ("Section 50-k"), this Office cannot defend an officer that it does not represent and one that has not been served with process. Indeed, Section 50-k provides that "[t]he duty to defend...shall be conditioned upon (a) delivery to the corporation counsel at the office of the law department of the city...a copy of any summons, complaint, process, notice, demand or pleading within ten days *after he is served* with such document...." N.Y. Gen. Mun. L. §50-k(4) (emphasis added).

Therefore, this Office respectfully request that the Court adjourn the initial conference currently scheduled March 22, 2022 until such time as service has been properly effected on the two individually named police officer defendants.

Thank you for your consideration herein.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mary K. Sherwood". The signature is written in dark ink and is positioned above the printed name and title.

Mary K. Sherwood

*Assistant Corporation Counsel*

Special Federal Litigation Division

cc: **VIA FIRST-CLASS MAIL**

Andre Diggs

Plaintiff *Pro Se*

20A1664/08697442P

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